

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JOHN SCOTT

PLAINTIFF

v.

No. 3:05CV121-B-B

SHERIFF LEO MASK

DEFENDANT

MEMORANDUM OPINION

This matter comes before the court on the September 26, 2005, *pro se* prisoner complaint of John Scott, challenging the conditions of his confinement under 42 U.S.C. § 1983. The plaintiff, who was convicted on two counts of homicide, alleges that the defendant, Pontotoc County Sheriff Leo Mask, impounded the plaintiff's 1991 Mitsubishi Eclipse to search it for evidence. The Sheriff then returned a 1999 Chevrolet Z71 truck in the plaintiff's possession to the family of one of the plaintiff's victims. The plaintiff claims that he had bought the truck from one of the murder victims – and that the plaintiff held an “open title” in his possession at the time of his arrest.

State Law Claim

At most plaintiff has asserted a state law tort claim of conversion against the defendant. The acts giving rise to a claim for conversion do not constitute a cognizable claim under 42 U.S.C. § 1983, as the plaintiff has an adequate remedy under state law – a common-law suit for conversion in state court. *Myers v. Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996) (quoting *Brooks v. George Co.*, 84 F.3d 157, 165 (5th Cir. 1996) (emphasis added)); *Davis v. Bayless*, 70 F.3d 367, 375 (5th Cir. 1995). As such, the instant case shall be dismissed for failure to state a claim

upon which relief could be granted, counting as a “strike” under 28 U.S.C. §§ 1915 (e)(2)(B)(i) and 1915(g). A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 19th day of October, 2005.

/s/ Neal Biggers

NEAL B. BIGGERS
SENIOR U. S. DISTRICT JUDGE